

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE**

FUSION ELITE ALL STARS, SPIRIT FACTOR  
LLC d/b/a FUEL ATHLETICS, and STARS AND  
STRIPE GYMNASTICS ACADEMY INC. d/b/a  
STARS AND STRIPES KIDS ACTIVITY  
CENTER, on behalf of themselves and all others  
similarly situated

Plaintiffs,

v.

VARSITY BRANDS, LLC, VARSITY SPIRIT,  
LLC, VARSITY SPIRIT FASHION & SUPPLIES,  
LLC, and U.S. ALL STAR FEDERATION, INC.,

Defendants.

**Civ. Action No. 2:20-cv-02600-SHL-  
atc**

**DEFENDANT U.S. ALL STAR FEDERATION, INC.'S MOTION FOR PROTECTIVE  
ORDER**

Defendant U.S. All Star Federation, Inc. ("USASF"), through its undersigned counsel, and pursuant to Fed. R. Civ. P. 26(b)(2)(B) and Local Rule 26.1(e)(9), hereby moves this Court for a protective order in the form of one of the following forms of relief in connection with Plaintiffs' First Set of Requests for Production:

1. Excuse USASF from collecting ESI from any custodians and repositories beyond those which were identified in its initial proposal and which have already been collected *and* limit the number of documents to be reviewed by USASF to 45,000.
2. Alternatively, require Plaintiffs to bear the costs associated with collecting/processing/searching ESI from any additional custodians and repositories beyond those which were identified in USASF's initial proposal and which have already been collected, *and* require Plaintiffs to bear the costs associated with the review of any documents in excess of 45,000.

Specifically, Plaintiffs' requests and accompanying proposals pertaining to electronically stored information ("ESI") are overly broad and seek information not relevant to any parties' claims or

defenses, are not proportional to the needs of the case, and are largely cumulative impose undue burden and expense on USASF. Accordingly, USASF respectfully requests a protective order limiting the scope of ESI collection and review as set forth above. Alternatively, to the extent the Court declines to limit the scope of discovery altogether, USASF respectfully requests that the Plaintiffs to bear the excess cost of discovery as set forth above. USASF further relies on its Memorandum of Law in Support and all exhibits thereto, submitted contemporaneously with this Motion.<sup>1</sup>

*Pursuant to Local Rule 7.2(d), USASF requests oral argument because it believes it will assist the Court in understanding the motion and the attendant issues and to answer any questions the Court may have.*

WHEREFORE, for the reasons set forth in USASF's Memorandum of Law in Support, USASF respectfully requests that all claims asserted in Plaintiffs' Amended Complaint against USASF be dismissed with prejudice.

May 5, 2021

Respectfully submitted,

/s/ Nicole D. Berkowitz

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<sup>1</sup> Because the Memorandum of Law in Support and its accompanying exhibits contain or make reference to material which is designated "Confidential" and/or "Highly Confidential – Attorneys' Eyes Only," these documents are being filed under seal pursuant to Section IX of the Protective Order (ECF No. 77).

*Attorneys for U.S. All Star Federation, Inc.*

**CERTIFICATE OF CONSULTATION**

Since USASF first served its written responses and objections to Plaintiffs' First Set of Requests for Production on November 18, 2020, the parties have engaged in numerous, lengthy telephone conferences regarding these responses. Throughout these conferences, counsel for USASF has emphasized that the ESI parameters must be reasonable in scope, be proportional to the needs of the case, and not cause undue burden or expense to USASF. In an April 16, 2021 letter to Plaintiffs' counsel, undersigned counsel proposed the relief sought herein. Plaintiffs did not agree to that proposal, and the parties have thus far been unable to reach an agreement on the ESI parameters applicable to USASF.

s/ Nicole D. Berkowitz

Nicole D. Berkowitz

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 5th day of May 2021, the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system and/or via U.S. Mail, postage prepaid, to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system. Any sealed filings are being be served by email to all counsel of record.

s/ Nicole D. Berkowitz

Nicole D. Berkowitz